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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 423

FRANK H. COONEY, AS GOVERNOR OF THE STATE OF MONTANA, ET AL., ETC.,

Appellants,

vs.

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

STATEMENT AS TO JURISDICTION.

RAYMOND T. NAGLE,
ENOR K. MATSON,
Counsel for Appellants.

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DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA

In Equity.

No. 1495

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, A CORPORATION,

Plaintiff,

vs.

FRANK H. COONEY, AS GOVERNOR OF THE STATE OF MONTANA; RAYMOND T. NAGLE, AS ATTORNEY GENERAL OF THE STATE OF MONTANA; AND JAMES J. BRETT, AS TREASURER OF THE STATE OF MONTANA,

Defendants.

STATEMENT OF BASIS OF APPELLATE JURISDICTION.

Pursuant to the provisions of Supreme Court Rule 12, Paragraph 1, the above named defendants and appellants file this, their statement, showing the basis on which said defendants and appellants contend that the Supreme Court of the United States has jurisdiction, upon appeal, to review the permanent injunction decree and order appealed from herein, as follows:

I.

The statutes believed to sustain the appellate jurisdiction are Sections 238 and 266 of the Judicial Code as amended (28 U. S. C. A. Section 345 (3) 380).

II.

The statutes of the State of Montana, the validity of which is involved, are Chapter 174 of the Montana Session Laws of 1933 as amended by Chapter 54 of the Special Session Laws of 1933.

The provisions of said Chapter 174, *supra*, that are pertinent to the appeal provide:

> "Every person, firm, copartnership, association, joint stock company, syndicate and corporation engaged in the business of operating or maintaining telephone lines and furnishing telephone service in the State of Montana, whether as owner, lessee, trustee or receiver or in any other capacity, shall pay in to the State Treasurer on or before the first day of January each year a license tax in the amounts following for each telephone instrument used, controlled and operated by it in the conduct of such business, based upon the number of telephone instruments owned, controlled and operated by it during all or any part of the calendar year, to-wit: On the first twenty (20) telephone instruments or less a license tax of Ten Cents (10¢) per phone; from twenty (20) to seventy-five (75) such instruments a license tax of Twenty Cents (20¢) per phone, and on all above seventy-five (75) a license tax of One Dollar ($1.00) for each such instrument. The license tax so paid shall in no manner effect the rates charged to the patrons and users of such telephone instruments, but shall be borne entirely by the owning and operating concern. Provided, the tax herein provided for shall not be imposed on any telephone instrument where the rate charged the customer therefor does not exceed Two Dollars ($2.00) per month for

residence phone, or Three Dollars ($3.00) per month for business house or office phone."

Chapter 174, page 379, Laws of Montana, 1933 (Twenty-third Session).

The provisions of said Chapter 54, *supra*, pertinent to the appeal, and which amend said Section 1 of said Chapter 174, provide:

"Every person, firm, co-partnership, association, joint stock company, syndicate and corporation engaged in the business of operating or mainaining telephone lines and furnishing telephone service in the State of Montana, whether as owner, lessee, trustee or receiver or in any other capacity, shall pay in to the State Treasurer on or before the first day of March each year a license tax in the amounts following for each telephone instrument used, controlled and operated by it in the conduct of such business.

"A license tax of Two Dollars ($2.00) for each instrument.

"No bill, statement or account rendered or given any customer by any telephone company shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this Act. Every person, firm, co-partnership, association, joint stock company, syndicate or any corporation affected by the provisions of this Act shall be permitted to claim as exempt from the tax imposed by this Act any telephone instrument where the rate charged the customer therefor does not exceed Two Dollars ($2.00) per month for residence phone, or Four Dollars ($4.00) per month for business house or office phone. Provided further, that the provisions of this Act shall not apply to mutual telephone companies or lines not organized or used or operated for private or corporate gain."

Chapter 54, page 161, Laws of Montana, 1933-34 (Twenty-third Extraordinary Session).

III.

The date of the decree and order sought to be reviewed herein is May 29, 1934, and the date upon which the application herein for appeal is presented is the 10th day of July, 1934.

IV.

The appeal herein is from a permanent injunction decree and order granted by a specially constituted District Court convened under the provisions of Section 266 of the Judicial Code, as amended (28 U. S. C. A. 380), restraining and enjoining the defendants, and each of them, and any and all persons acting in aid or assistance of them, or either of them, from taking any action against the plaintiff to enforce against the plaintiff the provisions of said Chapter 174 of the Session Laws of Montana 1933, or said Act as amended by Chapter 54 of the Session Laws of the Extraordinary Session of 1933-34, and from collecting or attempting to collect any tax or enforcing or attempting to enforce any penalty provided for therein.

V.

The cases believed to sustain the jurisdiction are as follows:

Stratton v. *St. Louis S. W. Ry. Co.*, 282 U. S. 10, 51 Sup. Ct. Rep. 8, 75 L. Ed. 135;

Ex parte Buder, 271 U. S. 461, 46 Sup. Ct. 557, 70 L. Ed. 1036.

Dated at Helena, this 10th day of July, 1934.

Respectfully submitted,

RAYMOND T. NAGLE,
Attorney General,
ENOR K. MATSON,
Assistant Attorney General,
Solicitors for Defendants and Appellants.

(5455-C)